incriminating books and papers.[6] However, even under the common law privilege, it has been held that a witness cannot refuse to obey a court order to bring his books to court, though upon the witness-stand he may refuse to disclose incriminating entries.[7] It would seem that the constitutional provision should not invalidate similar statutory obligations.[8] Apart from statutes it has been held that the constitutional provisions do not render the books or papers of a defendant inadmissible in evidence against him if secured otherwise than through the hand of the party whom they would tend to incriminate, even though procured by illegal means.[9] Similarly, if the party's writing has become a public document, it is available to the prosecution without the assistance of the person whose crime may be exposed thereby, and the constitution furnishes him no shield.[10]

In a recent decision the Appellate Division of the Supreme Court of New York held violative of this constitutional provision a statute which imposed upon stockbrokers the duty of permitting inspection by state officials of their records of stock transactions, some of which might be criminal. *People* v. *Reardon*, 39 N. Y. L. J. 171 (March, 1908). As those cases in which the books contain no incriminating entries are not distinguished, it seems that the decision must be founded on a confusion of constitutional provisions against compulsory self-incrimination and those against unreasonable search.[11] According to these tests of the limits of the constitutional provision it seems impossible to find here a "criminal case,"[12] and equally impossible to look upon the broker as a "witness."[13] The statute does not seem to differ from those which impose upon liquor dealers a duty to make to public officials periodical reports of all sales; and, under similar constitutional limitations, such statutes have been sustained.[14]

CONSTITUTIONALITY OF PRIMARY ELECTION ACTS. — Recently many states have passed acts regulating primary elections either to choose party candidates,[1] or to elect delegates to a state nominating convention,[2] or to do both.[3] In these acts small organizations which polled less than a certain proportion of the vote cast at the last election have been excluded. The constitutionality of such exclusion has lately been tested in Ohio, and the Supreme Court upheld the common provision of primary election laws, that members of parties polling ten per cent of the total vote cast at the last preceding election may vote for delegates to their state conventions at primary

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[6] Boyd *v.* United States, 116 U. S. 616.

[7] United States *v.* Collins, 145 Fed. 709; *In re* Lippman, 15 Fed. Cas. 572.

[8] *In re* Consolidated Rendering Co., 66 Atl. 790 (Vt.).

[9] Adams *v.* New York, 192 U. S. 585; State *v.* Boomer, 103 Ia. 106.

[10] People *v.* Coombs, 158 N. Y. 532.

[11] As to the constitutional provisions against unreasonable search, see Stanwood *v.* Green, 22 Fed. Cas. 1077; Shuman *v.* Fort Wayne, 127 Ind. 109; Hale *v.* Henkel, 201 U. S. 43, 71, 72. But *cf.* Boyd *v.* United States, *supra*. The constitution of New York does not impose this limitation.

[12] But *cf.* Counselman *v.* Hitchcock, *supra*.

[13] *Cf.* People *v.* Gardner, 144 N. Y. 119; Adams *v.* New York, *supra*, 597; United States *v.* Collins, *supra*.

[14] State *v.* Hanson, 113 N. W. 371 (N. Dak.); People *v.* Henwood, 123 Mich. 317. *Cf.* People *v.* Schneider, 139 Mich. 673. But *cf.* Matter of Peck, 167 N. Y. 391.

[1] Ky. Stat., 3 ed., § 1550.

[2] B. and C., Stat. Ore., 1902, § 2880.

[3] Oh. Ann. Rev. Stat., § 2916; Mass. Rev. Laws, c. 11, § 89.

elections paid for by the expenditure of public funds. *State* v. *Felton*, 84 N. E. 85. It is to be noted that the Ohio law is not mandatory, that candidates may still be nominated by a petition signed by a fixed number of voters, and that it is probable that informal primaries may still be held, though a convention chosen in this way will be given no legal recognition.[4] The principal constitutional question raised by this and similar acts is whether the smaller parties are denied equal protection of the law.[5] It will be noticed that the acts regulate the manner of nominating candidates or choosing delegates rather than qualify who may serve or who may act. It is true, however, that they give different-sized groups of voters different opportunities for putting their candidates' names on the official ballot, but this would not seem a fatal objection so long as no undue difficulty is imposed upon any one class. And regulation of some sort is essential in view of the fact that voters must necessarily be dealt with in masses; and since any system by which one or two men could nominate candidates would be unworkable, the prescribing of methods by which the larger and more cumbrous parties may make their true choice of candidates is a reasonable discrimination. This view is supported by decisions upholding the limitation of nomination by certificate from a party convention to a party which has polled a certain per cent of the votes cast at the last preceding election, relegating smaller parties to nomination by petition.[6] Moreover, other states have held their primary election acts with similar provisions constitutional.[7] Nor does the frequent provision of state constitutions that all elections shall be free and equal affect the result, since this clause merely refers to the protection of voters and to the value of each man's vote.[8] In general, therefore, it would seem that classification of parties as to methods of nomination on the basis of size, if no more than reasonable regulation, does not violate the Fourteenth Amendment by denying equal protection of the law.

The Ohio court also held that the fact that these primaries were to be run at public expense did not render them unconstitutional. It was argued that public money was not being used for a public purpose, and hence taxation to support primaries was not due process of law. This argument seems untenable in view of the fact that the protection of the purity and expedition of elections, the purpose of these acts, is a fundamental function of state governments, unabridged by the constitution.[9] When, however, the law steps outside the bounds of reasonable regulation and is merely conferring a privilege on certain parties at the expense of the general public, taxation to support it would, of course, cease to be due process of law.

APPLICATION OF PAYMENTS. — An inferior Canadian court has recently held that a payment the application of which was not directed by the

[4] But *cf.* Young *v.* Beckham, 115 Ky. 246.

[5] Cooley, Const. Lim., 7 ed., 899.

[6] State *v.* Poston, 58 Oh. St. 620; Corcoran *v.* Bennett, 20 R. I. 6; State *v.* Black, 54 N. J. L. 446.

[7] State *v.* Jensen, 86 Minn. 19; Kenneweg *v.* County Comm., 102 Md. 119; Ladd *v.* Holmes, 40 Ore. 167; State *v.* Drexel, 105 N. W. 174 (Neb.). See People *v.* Election Comm., 221 Ill. 9. But *cf.* Britton *v.* Election Comm., 129 Cal. 337 (mandatory act).

[8] See 23 Am. L. Rev. 728; Ladd *v.* Holmes, *supra*, 178.

[9] Kenneweg *v.* County Comm., *supra*.